

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT ELDORET
ELC CASE NO. 55 OF 2022

LITTLE SISTERS OF ST.FRANCIS OF ASSISI.....PLAINTIFF

-VERSUS-

RIFT VALLEY BOTTLERS LIMITED.....1ST DEFENDANT

ALMASI BOTTLERS LIMITED.....2ND DEFENDANT

JUDGEMENT

1. The Plaintiff herein filed a Plaint dated 17.10.2022 (hereinafter referred to as **“the present suit”**) against the 1st and 2nd Defendants seeking for the following Orders; -
 - a. **An Order of specific performance to compel RIFT VALLEY BOTTLERS LIMITED and/or ALMASI BOTTLERS LIMITED to specifically effect the production of requisite documents required for the processing of title transfer including RIFT VALLEY BOTTLERS LIMITED and ALMASI BOTTLERS LIMITED Certificate of Incorporation, the Land Control Board Consent, KRA Pins, Passport Photographs and effect the transfer of the LR.NO. ELDORET MUNICIPALITY BLOCK 8/627 to the Plaintiff within 30 days of the Judgement.**
 - b. **That in default, the Deputy Registrar of the Environment and Land Court do effect the transfer of the property known as LR.ONO. ELDORET MUNICIPALITY BLOCK 8/627 to the Plaintiff by executing the relevant Transfer of Lease documents and all other relevant accompanying documents.**
 - c. **That an Order commanding/directing the Chief Land Registrar and the Registrar of Titles to register the Plaintiff LITTLE SISTERS OF ST. FRANCIS OF ASSISI as the proprietors of LR.NO.ELDORET MUNICIPALITY**

BLOCK 8/627 measuring approximately 0.2023 of a Hectare and forthwith issue the Plaintiff with the Certificate of Lease.

d. Costs of the suit and interest thereon at Court rates.

e. Any other order or further order that the Honourable Court deems it fit and just to grant.

2. The facts relied upon by the Plaintiff in seeking the above prayers are summarised as follows;-

- i) The Plaintiff did purchase the property known as LR.NO.ELDORET MUNICIPALITY BLOCK 8/627 (hereinafter referred to as “**the suit property**”) from the 1st Defendant.
- ii) Upon purchasing the suit property from the 1st Defendant, the Plaintiff took possession thereof and have been in use of the same.
- iii) Similarly, the directors of the 1st Defendant did prepare and execute the relevant Transfer Form after obtaining the Consent to Transfer from the Commissioner of Land as then was.
- iv) However, before the suit property would be transferred from the 1st Defendant to the Plaintiff, the directors of the 1st Defendant passed on and its operations were taken over by the 2nd Defendant.
- v) Unfortunately, the directors of the 2nd Defendant have failed, refused and neglected to provide the relevant documents to facilitate the transfer of the suit property to the Plaintiff herein.
- vi) In essence, the Plaintiff is seeking for either specific performance in terms of provision of the completion

documents and/or an Order directed to the Deputy Registrar of the Environment and Land Court Eldoret to execute all the relevant documents to facilitate the registration of the suit property in the name of the Plaintiff.

3. The present suit was duly served on the 1st and 2nd Defendants who did enter appearance on the 30.11.2022.
4. In opposition of the present suit, the 1st and 2nd Defendants filed a Statement of Defence dated 30.11.2022.
5. In the Statement of Defence dated 30.11.2022, the 1st and 2nd Defendants did plead as follows; -
 - i) The 1st and 2nd Defendant denied the existence of any Agreement For Sale with the Plaintiff herein and put them to strict proof thereof.
 - ii) The 1st and 2nd Defendant further did deny that its directors either executed a Transfer of Lease to the Plaintiff upon payment of any consideration as alleged.
 - iii) The 1st and 2nd Defendant did state that the Plaintiff was not in occupation and use of the suit property and put them to strict proof thereof.
 - iv) In essence, the 1st and 2nd Defendant denied knowledge of any application to change the user of the suit property from residential to commercial as pleaded by the Plaintiff.
 - v) Further to that, the 1st and 2nd Defendant stated that there was no obligation to hand over any completion documents of the suit property as alleged by the Plaintiff as there was no contract relating to the suit property.

- vi) As such, the 1st and 2nd Defendants sought the Court to dismiss the Plaintiff's suit forthwith.
6. In a response to the 1st and 2nd Defendant's Statement of Defence, the Plaintiff filed a Reply to the 1st and 2nd Defendant's Defence dated 18.02.2023.
- i) The Plaintiff did reiterate the contents of the Plaintiff herein and stated that the 1st Defendant had indeed executed a Transfer Form and obtained the relevant Consent to Transfer from the Commissioner of Land.
- ii) The Plaintiff confirmed the transaction of the suit property including payment of the consideration was undertaken by the firm KIMARU KIPLAGAT & COMPANY, ADVOCATES which was still the firm representing the 1st and 2nd Defendants in the present suit.
- iii) The Plaintiff pleaded that upon receipt of the consideration, the 1st Defendant surrendered the original Certificate of Lease, Transfer Form, the Consent to Transfer but did not avail the Certificate of Incorporation, the KRA Pin, Copies of the Identification Cards of the Directors and their coloured photographs.
- iv) The Plaintiff further pleaded that upon payment of the full purchase price, it proceeded to take actual possession of the suit property and in fact began the exercise of changing the user from residential to commercial.
- v) The Plaintiff therefore sought this Court to dismiss the 1st and 2nd Defendants Statement of Defence as a mere denial and grant the prayers sought in the present suit.
7. Upon filing and serving of the Reply to Defence dated 18.02.2023, the matter was set down for hearing.

PLAINTIFF'S TESTIMONY & DOCUMENTARY EVIDENCE

8. The hearing of the Plaintiff's case began with the testimony of SISTER ANGELINE SIMATEI who was marked as PW 1.
9. PW 1 did introduce herself as the Director of the Plaintiff who resides in Eldoret town.
10. PW 1 proceeded to inform the Court that she had prepared a witness statement dated 17.10.2022 in which she adopted the same as her evidence in chief.
11. In support of PW 1 testimony, the following documents were produced; -

PW 1 EXHIBIT 1- A Copy of the Lease Agreement in the name of the 1st Defendant over the suit property dated issued on the 01.10.2005.

PW 1 EXHIBIT 2- A Copy of the Certificate of Lease in the name of the 1st Defendant over the suit property dated 26.04.2006.

PW 1 EXHIBIT 3- A Copy of an Application for Consent to Transfer the suit property from the 1st Defendant to the Plaintiff dated 20.07.2018.

PW 1 EXHIBIT 4- A Copy of the Transfer of Lease of the suit property from the 1st Defendant to the Plaintiff not dated.

PW 1 EXHIBIT 5- A Copy of the Certificate of Search dated 14.02.2018 for the suit property.

PW 1 EXHIBIT 6- A Copy of the Certificate of Exemption Issued to the Plaintiff dated 03.04.1987.

PW 1 EXHIBIT 7- A Copy of the Kenya Revenue Pin Number for the Plaintiff.

PW 1 EXHIBIT 8- A Copy of the Rates Statements for the suit property dated 24.07.2018 paid by the Plaintiff.

PW 1 EXHIBIT 9- A Copy of the Public Notice for Change of User of the suit property from Residential to commercial published on the 06.02.2018.

PW 1 EXHIBIT 10- A Copy of a letter dated 01.09.2020 from the Plaintiff's Advocate to the 2nd Defendant.

PW 1 EXHIBIT 11- Copy of a letter dated 16.04.2021 from the Plaintiff to the 2nd Defendant.

PW 1 EXHIBIT 12- A Copy of a letter dated 28.07.2021 from the Plaintiff Advocates to the Plaintiff.

12. PW 1 upon producing the above documents informed the Court that the Plaintiff herein purchased the suit property in the year 2006 for a consideration of Kenya Shillings Two Million (KShs.2,000,000/-) which was settled in full.
13. Thereafter, the Plaintiff took possession of the suit property with a view of developing a school on the same.

14. According to the PW 1, the Directors of the 1st Defendant did surrender a number of the completion documents to the Counsel handling the transaction but not all the required documents.
15. In essence, the transfer process was not effected before the 1st Defendant ceased operations.
16. Unfortunately, the directors of the 2nd Defendant which took the operations of the 1st Defendant have never been co-operative to facilitate the transfer of the suit property to the Plaintiff's name.
17. PW 1 admitted that the Agreement For Sale between the Plaintiff and the 1st Defendant had not been produced but sought to rely on PW 1 EXHIBIT 10 which was a letter from the mutual advocate confirming that indeed there was an Agreement For Sale and the purchase price was fully paid.
18. On cross-examination, the Plaintiff stated that the 1st Defendant had not denied the sale of the suit property to the Plaintiff based on the documents before the Court.
19. On being referred to PW 1 EXHIBIT 10, PW 1 denied knowledge that the challenge to complete the transfer emanated from the conduct of the 2nd Defendant.
20. PW 1 confirmed that the directors of the 1st Defendant had executed the Transfer Form and obtained the Consent to Transfer.
21. PW 1 did confirm to the Court that there was no ownership dispute about the suit property save for the 1st and 2nd Defendants to avail the relevant documents to facilitate the transfer thereof.

22. At the end of this cross-examination, there was no re-examination and the Plaintiff closed their case thereof.

1ST AND 2ND DEFENDANT'S TESTIMONY & DOCUMENTARY EVIDENCE

23. Mr. Songok on behalf of the 1st and 2nd Defendants informed the Court that he had notified the directors of the 2nd Defendant of the hearing date but there was no witness in Court.

24. Consequently, Counsel for the 1st and 2nd Defendant sought to close the 1st and 2nd Defendant's case without calling any witness thereof.

25. Based on the above submissions, the Court proceeded to close the 1st and 2nd Defendant's case.

26. Thereafter, the parties were directed to prepare, file and serve their final submissions.

27. The Plaintiff duly filed their submissions dated 08.08.2025 while the 1st and 2nd Defendants failed to file any submissions.

28. The Court has indeed perused the pleadings in the present suit, the testimonies of the parties, the submissions and identifies the following issues for determination; -

ISSUE NO. 1- IS THERE A VALID CONTRACT BETWEEN THE PLAINTIFF AND THE 1ST DEFENDANT?

ISSUE NO.2- HAS THE 1ST DEFENDANT COMPLIED WITH THE TERMS OF THE AGREEMENT FOR SALE?

ISSUE NO. 3- IS THE PLAINTIFF ENTITLED TO THE PRAYERS SOUGHT IN THE PRESENT SUIT?

ISSUE NO.4- WHO BEARS THE COSTS OF THE PRESENT SUIT?

29. The Court having identified the above issues for determination, the same are discussed herein below.

ISSUE NO. 1- IS THERE A VALID CONTRACT BETWEEN THE PLAINTIFF AND THE 1ST DEFENDANT?

30. The first issue for determination is whether or not there is a valid Agreement for Sale between the Plaintiff and the 1st Defendant over the suit property.

31. According to PW 1, the Plaintiff herein purchased the suit property from the 1st Defendant in the year 2006 through the firm known as KIMARU KIPLAGAT & COMPANY, ADVOCATES who was the mutual Advocate.

32. The Plaintiff testified that the Purchase Price was fully settled and the 1st Defendant even surrendered various documents including the Original Lease, the Certificate of Lease, the Transfer Form and the Consent to Transfer to the mutual advocate.

33. The Plaintiff did produce the document marked as PW 1 EXHIBIT 10 which was a letter dated 01.09.2020 from the Mutual Advocate to the Plaintiff Counsel.

34. From a perusal of the letter dated PW 1 EXHIBIT 10, it is clear that the mutual advocate confirmed that the Plaintiff had purchase the suit property from the 1st Defendant and the consideration paid in full.
35. Clearly therefore, there is not dispute that the Plaintiff herein entered into a binding Agreement For Sale with the 1st Defendant and fully complied with its part of the transaction as disclosed by the mutual advocate acting in the said transaction.
36. As such, this Court is of the considered view and finding that there was a legal and binding contract between the Plaintiff and the 1st Defendant for the purchase of the suit property herein as pleaded by the Plaintiff.

ISSUE NO.2- HAS THE 1ST DEFENDANT COMPLIED WITH THE TERMS OF THE AGREEMENT FOR SALE?

37. The second issue was whether the 1st Defendant did comply with the terms and conditions contained in the Agreement For Sale especially provision of the completion documents.
38. According to the Plaintiff, the 1st Defendant surrendered various documents to the Mutual Advocate in compliance with performing its terms and conditions contained in the Agreement For Sale.
39. The Plaintiff testified before the Court that the 1st Defendant had surrendered the Original Lease over the suit property, the Certificate of Lease, the duly Transfer Forms, the Consent to Transfer from the Commissioner of Lands and the Certificate of Incorporation.

40. However, the KRA Pin Certificates of the 1st Defendant's Directors, their Copies of National Identification Cards and their coloured photographs were not availed.
41. Unfortunately, the Directors of the 1st Defendant passed away and the transaction stalled thereafter.
42. The Plaintiff once again relied on the letter produced as PW 1 EXHIBIT 10 from the Mutual Advocate which confirmed the same.
43. Based on the above facts and documents before the Court, it is clear that the 1st Defendant did not avail all the relevant documents to facilitate the transfer of the suit property to the Plaintiff.
44. The documents that have really stalled the transfer of the suit property to the Plaintiff are those that relate to the directors of the 1st Defendant.
45. The entry of the 2nd Defendant as the successor of the 1st Defendant has not improved the situation as the documents lacking are those of the 1st Defendants directors and not even the 1st Defendant itself.
46. As such, this Court of the view and finding that indeed it is the 1st Defendant that has not provided all the relevant documents to facilitate the transfer of the suit property to the Plaintiff.

ISSUE NO. 3- IS THE PLAINTIFF ENTITLED TO THE PRAYERS SOUGHT IN THE PRESENT SUIT?

47. Based on the determination of Issue No.2 hereinabove, this Court is of the view that the transaction between the Plaintiff and the 1st Defendant should be completed.

48. It is clear that the Plaintiff performed their part of the Agreement although the 1st Defendant did a partial compliance in terms of the completion documents.
49. In essence, this Court should give the relevant directions to ensure that the transaction between the 1st Defendant and the Plaintiff is complete and the suit property registered in the name of the Defendant.

ISSUE NO.4- WHO BEARS THE COSTS OF THE PRESENT SUIT?

50. On the issue of costs, this Court is of the view that since the directors of the 1st Defendant have since passed on, it would be unrealistic to order costs against the 1st Defendant which the Court is not sure if it is still in operation.
51. Similarly, the 2nd Defendant entity that took over the operations of the 1st Defendant did not participate in the hearing of this matter.
52. As such, the Court is of the view that each party bears its own costs in this suit.

CONCLUSION

53. In conclusion thereof, this Court do hereby make the following Orders in determination of the present suit; -

A. THE PLAINT DATED 17.10.2022 IS MERITED.

B. THE PLAINTIFF BE AND IS HEREBY DECLARED THE LEGITIMATE AND LAWFUL OWNER OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 8/627.

C. THE FIRM OF KIMARU KIPLAGAT BEING THE MUTUAL ADVOCATE OF BOTH THE 1ST DEFENDANT AND THE PLAINTIFF HEREIN IS DIRECTED TO PREPARE ALL THE RELEVANT COMPLETION DOCUMENTS REQUIRED FOR THE TRANSFER OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 8/627 WITHIN THE NEXT THIRTY (30) DAYS FROM THE DATE OF THIS JUDGEMENT.

D. THE DEPUTY REGISTRAR OF THE ENVIRONMENT AND LAND COURT ELDORET BE AND IS HEREBY DIRECTED TO EXECUTE ANY OR ALL THE RELEVANT DOCUMENTS NECESSARY TO FACILITATE THE TRANSFER OF THE SUIT PROPERTY FROM THE 1ST DEFENDANT TO THE PLAINTIFF HEREIN WITHIN 14 DAYS FROM THE DATE OF PRESENTATION.

E. UPON PROCURING ALL THE COMPLETION DOCUMENTS REQUIRED TO FACILITATE THE REGISTRATION OF THE PLAINTIFF AS THE OWNER OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 8/627, THE FIRM OF KIMARU KIPLAGAT WILL LODGE THE SAME FOR REGISTRATION UPON PAYMENT OF THE RELEVANT STATUTORY CHARGES PAYABLE TO THE GOVERNMENT WITHIN A PERIOD OF 21 DAYS THEREOF.

F. EACH PARTY WILL BEAR ITS OWN COSTS AS REGARDS THE PRESENT SUIT.

DATED, SIGNED & DELIVERED Virtually at **ELDORET ELC** this **4TH DAY OF DECEMBER 2025.**

EMMANUEL.M. WASHE
JUDGE

IN THE PRESENCE OF:

Court Assistant: Brian

Plaintiff: Ms. Kiget holding brief Mr. Arusei for the Plaintiff

Defendant: Mr. Kibii for the 1st and 2nd Defendants